

Federal Communications Commission

DA 99-868

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Mishicot, Wisconsin and
Gulliver, Michigan)

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MM Docket No. 99-145
RM-9336

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**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: April 28, 1999

Released: May 7, 1999

Comment Date: June 28, 1999

Reply Date: July 13, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Bay-Lakes-Valley Broadcasting, Inc. ("Bay-Lakes") proposing the substitution of Channel 234C3 for Channel 234A at Mishicot, Wisconsin, and the modification of its license for Station WGGM to specify operation on the higher class channel. Bay-Lakes also requests the substitution of Channel 273C1 for Channel 234C1 at Gulliver, Michigan.¹ Bay-Lakes indicated that it would file an application for Channel 234C3 at Mishicot if the channel is allotted to the community.
2. We believe Bay-Lakes' proposal warrants consideration because the proposed substitution would provide Mishicot with a wide coverage area FM service. Bay-Lakes notes

¹ Bay-Lakes filed a petition requesting the substitution of Channel 234C3 for Channel 234A at Mishicot. To accommodate the upgrade at Mishicot, Bay-Lakes also requested the substitution of Channel 260C1 for Channel 234C1 at Gulliver, Michigan, substitution of Channel 227A for Channel 260A at Manistique, Michigan, and substitution of Channel 292C2 for Channel 260C2 at Rogers City, Michigan. In response to the petition, Ives Broadcasting, Inc. ("Ives"), licensee of Station WHAK at Rogers City, Michigan, filed comments providing an alternate plan which accommodates Bay-Lakes desire to upgrade and allows Station WHAK to remain on Channel 260C2. Ives proposes the substitution of Channel 273C1 for Channel 234C1 at Gulliver, Michigan, and the substitution of Channel 234C3 for Channel 234A at Mishicot. No other changes to the FM Table of Allotments would be required. Since Bay-Lakes has filed comments supporting the alternate scheme proposed by Ives, no changes will be proposed at Manistique or Rogers City, Michigan.

that Channel 234C3 can be allotted to Mishicot, Wisconsin, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 273C1 is substituted for Channel 234C1 at Gulliver, Michigan.² Station WCMM operates on Channel 234C1 at Gulliver. The proposed substitution at Gulliver can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the current site of Station WCMM.³ Since Gulliver is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment of Channel 273C1 at Gulliver. As requested, we shall also propose to modify the license for Station WGGM to specify operation on Channel 234C3 in accordance with section 1.420(g) of the Commission's Rules.

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it would reimburse the affected station for the costs incurred in changing frequencies. Bay-Lakes has acknowledged its responsibility to reimburse Station WCMM, Gulliver, Michigan, for the reasonable costs in changing frequency.

4. In view of the above, we believe the public interest would be served by proposing the allotment of Channel 234C3 to Mishicot, Wisconsin, since it would provide the community with its first wide coverage area FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Gulliver, Michigan	234C1	273C1
Mishicot, Wisconsin	234A	234C3

5. IT IS FURTHER ORDERED, pursuant to section 316(a) of the Communications Act of 1934, as amended, Great Lakes Radio Incorporated, the licensee of Station WCMM, Gulliver, Michigan, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 273C1 in lieu of Channel 234C1.

6. Pursuant to Section 1.87 of the Commission's Rules, Great Lakes Radio Incorporated, may not later than June 28, 1999, file a written statement showing with particularity why their respective authorization should not be modified as proposed in the Order to Show Cause. The Commission may call on Great lakes Radio Incorporated to furnish additional

² The coordinates for Channel 234C1 at Mishicot are 44-22-48 and 87-36-58.

³ The coordinates for Channel 273C1 at Gulliver are 45-58-01 and 86-29-18.

information. If Great Lakes Radio Incorporated raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Great Lakes Radio Incorporated will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary Shall Send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the following:

Great lakes Radio Incorporated
101 Huron Court
Negaunee, Michigan 49866

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before June 28, 1999, and reply comments on or before July 13, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John F. Garziglia
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D. C. 20006

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the

commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of

Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.